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EPA, State reach \$290,000 settlement over Rico mine tailings discharge

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BOB FITZGERALD / Journal

In this file photo from April of 2000, melting snow flows into settling ponds at Rico. Workers from the Environmental Protection Agency were reinforcing the dikes three years ago, when, due to heavy spring runoff, they were leaking into the Dolores River. Shareholders of the Rico Development Company will pay \$290,000 to the EPA for use in cleaning up the St. Louis Tunnel where heavy metals pollute Silver Creek.

The U.S. Environmental Protection Agency and State of Colorado reached a consent decree Monday, June 2, with shareholders of Rico Development Corporation in litigation over contaminated discharge from an abandoned mine tunnel at the Rico Argentine mine site.

The defendants entered into the decree with the estates of Wayne Webster and Virginia Sell, former RDC shareholders. The settlement requires estate holders for Webster and Sell to pay \$180,000 and \$110,000, respectively.

Town of Rico Attorney Eric Heil said he couldn't comment on the consent decree because he hasn't seen it yet, but felt that the settlement was short of what it could have been.

"Considering they (RDC) sold the property for three and a half million, the settlement seems light," Heil said. "The treatment plant was never fully in compliance from day one. It was intentionally abandoned."

RDC purchased the mine site from the Atlantic Richfield Company and was incorporated in 1988 by Mr. Webster and Ms. Sell's late husband, Marion P. Sell, for the purpose of developing the site located

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on Silver Creek, a tributary of the Dolores River. The company was responsible under a permit issued by the State of Colorado for treating the continually discharging contaminated mine water from the St. Louis Tunnel.

The lawsuit by the EPA and State of Colorado was issued in July 1999 after a treatment facility near the St. Louis Tunnel, the main point of pollution, was abandoned and dismantled.

"The settlements were reasonable considering the circumstances," Sheldon Muller, the Region 8 EPA attorney who argued the case said. "It was different than other cases because the defendants passed away."

The death of Webster and Marion Sell, as well as other ownership changes, made finding a responsible party difficult in this case, Muller said.

"Rico Properties conducted a survey after purchasing land in the area, they discovered that they may have purchased the (St. Louis) Tunnel," Muller said, adding that Rico Properties tried to reconvey the property back to RDC but it was not legally affective.

ARCO and NL Industries have remained the clearly responsible parties. Fortunately ARCO has been working with the Town of Rico to treat the discharge that contains high levels of zinc and mercury, said Heil. These contaminants require a higher level of treatment that can be very expensive. The settlement will not be sufficient to reinstall and operate the treatment plant.

Predecessors of NL Industries (formerly the National Lead Company) and ARCO, the Atlantic Richfield Company, actively mined the area and dug the St. Louis Tunnel.

"Money from the settlement may be used for ARCO (to construct a treatment facility) if they enter in to a settlement with the EPA over the construction and operation of a plant," Muller said.

"If ARCO's efforts fail or they don't agree to enter into a settlement, it's at that point we will consider action against ARCO and NL (Industries)."

That litigation isn't anticipated now. Which is just how Heil said he would like it. The EPA's approach has been to avoid litigation in this case because court actions take so long. Heil hopes to form a nonprofit company in the near future that would bring stake holders such as Rico Properties, Rico Renaissance, Rico Land and Cattle, ARCO and the Town of Rico together.

"ARCO has been pretty active in the community," Heil said.
"Everyone wants to see a cooperative approach. Litigation takes too long."

There is just too much at stake that needs to be accomplished within the next two years, Heil said.

"The Department of Health has found other problems that won't be solved just by treating the St. Louis Tunnel," he said about growing concerns in the area.

Specifics for lime treatment used for heavy metals, dredging of the settling ponds, and storing contaminated soil all need to be addressed, Heil said. The Department of Health has also been getting more strict on the Total Maximum Daily Load for pollution.

In the wake of the remediation and restoration needs is the fact the Town of Rico hasn't been given an estimate for how much these projects will cost. "I can't even give a ball park figure because I just don't know, Heil said."

"It's frustrating because we are such a small town and just don't have the means we need," he said.

In the next month or so Heil hopes to receive a grant that will enable him to organize stake holders to discuss the future of the project.

In the meantime, the site has not been listed as Superfund site per se. But it is associated with Superfund sites, which makes the St. Louis Tunnel eligible for cleanup funding.

"ARCO is willing to put in some money and take the lead in getting treatment going," Heil said, but "the town wants restoration and nothing has been put in writing."

Consent decrees are reached when a defendant agrees to stop illegal activity without admitting guilt of wrongdoing. The nature of the payment is a contract or agreement under the sanction of the court once the comment period is finished.

Public comment period starts when the U.S. Department of Justice files the decree. The decree should be filed this week, Muller said.

If there are no adverse public comments then the court has the decree signed and it becomes a judgment. If there are adverse comments, Muller said, the EPA attorneys will evaluate and decide if they want to withdraw from the decree.

However Muller doesn't anticipate any comments, especially contrary

to the settlement.

"To try for any more money (out of RDC) is like getting blood out of a turnip," he said.

The official decree will be available in the Region 8 EPA office and on the U.S. Department of Justice Web site. Comments are taken by the Assistant Attorney General of the Environment and Natural Resource Division of the U.S. DOJ.

Once finalized, the money will be deposited in the Rico-Argentine Special Account within the EPA's Hazardous Substance Superfund.

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